

Applicant : Mihai Ibanescu et al.
Serial No. : 10/008,963
Filed : October 25, 2001
Page : 11

Attorney's Docket No. 01997-324001

REMARKS

New claims 45-71 are identical to claims 8, 12, 14, 18, 19, 22, and 24-44, respectively, which were cancelled by an Examiner's Amendment included with the Notice of Allowance dated May 7, 2004. We ask that new claims 45-71 be allowed and a Supplemental Notice of Allowance be mailed indicating their allowance.

Although authorization for the Examiner's Amendment was given following a call by the Examiner to applicants' representative David Feigenbaum on April 30, 2004, Mr. Feigenbaum misunderstood the claims in question to be directed to a non-elected *invention* resulting from a Restriction Requirement. In fact, the claims in question were directed to a non-elected *species* (see Species Election and Response to Election Requirement dated February 25, 2003 and March 20, 2003, respectively). Upon a finding that a claim generic to all of the non-elected species is allowable, those claims directed to non-elected species should be examined (See MPEP 809.02(c)).

Such is the case in the present application. The Notice of Allowance dated May 7, 2004 indicates that claim 1 is allowed. Cancelled claims 8, 12, 14, 18, 19, 22, and 24-44 all depend, either directly or indirectly, from claim 1. Therefore, these claims should have been examined rather than cancelled as being directed to a non-elected species. Accordingly, we represent the cancelled claims as new claims 45-71 and asked that they be allowed, particularly where they all depend from claim 1, which is allowed.¹

The substance of these remarks was communicated to Examiner Nguyen during a telephone interview with applicants' representative Marc Wefers on June 7, 2004. The Examiner generally agreed that cancelled claims should be allowable, because they all depend from claim 1. However, he asked that we formally represent the cancelled claims with the present amendment so that he could issue a Supplemental Notice of Allowance.

¹ Parenthetically, we note that claims 53, 60-62, 67, 68, 70, and 71 all depend on claim 1 through the body of the claim, as did their counterparts in the cancelled claims.

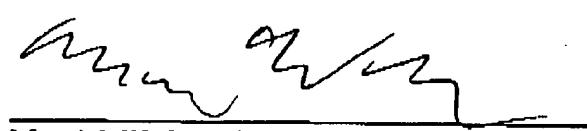
Applicant : Mihai Ibanescu et al.
Serial N : 10/008,963
Filed : October 25, 2001
Page : 12

Attorney's Docket N . 01997-324001

Applicant asks that all claims be allowed in view of the amendment to the claims. Please apply any other charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 01997-324001.

Respectfully submitted,

Date: 6/29/04



Marc M. Wefers* for
David L. Feigenbaum
Reg. No. 30,378

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

*See attached document certifying that Marc M. Wefers has limited recognition to practice before the U.S. Patent and Trademark Office under 37 C.F.R. § 10.9(b).

20868274.doc

**BEFORE THE OFFICE OF ENROLLMENT AND DISCIPLINE
UNITED STATE PATENT AND TRADEMARK OFFICE**

LIMITED RECOGNITION UNDER 37 CFR § 10.9(b)

Marc M. Wefers is hereby given limited recognition under 37 CFR §10.9(b) as an employee of Fish & Richardson P.C., to prepare and prosecute patent applications wherein the patent applicant is the client of Fish & Richardson P.C. and the attorney or agent of record in the applications is a registered practitioner who is a member of Fish & Richardson P.C. This limited recognition shall expire on the date appearing below, or when whichever of the following events first occurs prior to the date appearing below: (i) Marc M. Wefers ceases to lawfully reside in the United States, (ii) Marc M. Wefers' employment with Fish & Richardson P.C. ceases or is terminated; or (iii) Marc M. Wefers ceases to remain or reside in the United States on an H-1B visa.

This document constitutes proof of such recognition. The original of this document is on file in the Office of Enrollment and Discipline of the U.S. Patent and Trademark Office.

Expires: December 6, 2004



Harry I. Moatz
Director of Enrollment and Discipline